

**Response Under 37 CFR 1.116**

**Expedited Procedure**

**Examining Group 3754**

Application No. 10/584,656

Paper Dated: January 8, 2010

In Reply to USPTO Correspondence of October 8, 2009

Attorney Docket No. 0388-061892

**REMARKS**

**I. Introduction**

The final Office Action of October 8, 2009 has been reviewed and the Examiner's comments carefully considered. Claims 7-25 were previously pending in this application. The present Amendment amends independent claim 7 in accordance with the originally-filed specification. No new matter has been added by this Amendment. More specifically, claim 7 has been amended to include the language of claims 15 and 21. In addition, the present amendment cancels claims 15, 16, 21, and 22. Accordingly, claims 7-14, 17-20, and 23-25 are currently pending, and claim 1 is in independent form. The Applicants respectfully request entry of the above amendment and favorable reconsideration of the claims.

**II. Prior Art Rejections**

**A. Rejection under 35 U.S.C. §103(a) in view of United States Patent Application Publication No. 2002/0190079 and United States Patent No. 4,002,168**

Claims 7-10, 13, 14, 17-20, and 23-25 stand rejected under 35 U.S.C. 103(a) for obviousness over United States Patent No. 4,002,168 to Petterson (hereinafter "the Petterson patent") in view of United States Patent Application Publication No. 2002/0190079 to Hamamoto (hereinafter "the Hamamoto publication"). In addition, claims 7-10, 13, 14, 17, 18, and 23 stand rejected under 35 U.S.C. 103(a) for obviousness over the Hamamoto publication in view of the Petterson patent. In view of the foregoing amendments and the following remarks, reconsideration of these rejections is respectfully requested.

As defined by amended independent claim 7, the present invention is directed to an eye drop container that includes: a container body having a liquid storage portion for containing liquid therein; an instilling portion for allowing the liquid to flow out in an opened stage; an aerating device provided at the bottom of the container body and having a filter element and a check valve for allowing ambient air to flow in from the outside and preventing the liquid from flowing out; and a cap attachable to the container body and including an opening member

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for opening the instilling portion in an unopened stage and a valve member for allowing the liquid to flow out and preventing ambient air from flowing into the container. The valve member prevents the ambient air from flowing into the container when the valve member is in tight contact with the opening member from its outside and allows the liquid to flow out when the valve member is away from the opening member due to pressure of the liquid.

The Petterson patent is directed to a dispenser (10) suitable for storing and dispensing an ophthalmic product that includes a container (11), provided with an integral generally ring shaped positioning/guard means (12), dispensing orifice (13), and overcap (14). In addition, the dispenser (10) includes a pressure equalizing device (25), a filter (26), and an inlet (27) (*see* column 9, lines 24-54 of the Petterson patent).

The Hamamoto publication is directed to a dispensing container that includes a delaminating bottle (2) as a member for shutting off a liquid content from ambient air so that, without aid of any preservatives, a liquid residue is protected from contamination at a region adjacent to an outlet hole (3a). The container has a flexible nozzle (31) and a rod-shaped closer (32), both disposed in the mouth of bottle (2). The nozzle (31) is made of a pliable and elastic material, with the closer (32) being shaped to close a distal end region of the outlet hole (3a). By squeezing the barrel of the bottle to increase its internal pressure, the flexible nozzle (31) expands to make a deformation, which in turn causes the outlet hole (3a) to take an outward open position. The dispensing container includes vents (4) that may be formed at the bottom of the bottle (*see* paragraph [0034] of the Hamamoto publication). Ambient air is introduced between the container body (21) and a bag-like inner layer (22) to prevent ambient air from directly contacting the liquid contained in the dispensing container.

The Petterson patent and the Hamamoto publication, whether considered individually or in combination, fail to teach or suggest a cap attachable to the container body and including an opening member for opening the instilling portion in an unopened stage and a valve member for allowing the liquid to flow out and preventing ambient air from flowing into the container, or that the valve member prevents the ambient air from flowing into the container

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when the valve member is in tight contact with the opening member from its outside and allows the liquid to flow out when the valve member is away from the opening member due to pressure of the liquid as required by amended independent claim 7.

In addition, it should be noted that, in the container of the Hamamoto publication, ambient air is introduced into the gap between the container body (21) and the inner layer (22) to prevent ambient air from directly contacting the liquid contained in the bottle. Accordingly, a filter (reference numeral 26 in the Petterson patent) would not be necessary for preventing a contamination source from entering the container. Therefore, one of ordinary skill in the art would not combine the teachings of the Hamamoto publication and the Petterson patent.

For the foregoing reasons, the Applicants believe that the subject matter of amended independent claim 7 is not rendered obvious by the Petterson patent in view of the Hamamoto publication or by the Hamamoto publication in view of the Petterson patent. Reconsideration of the rejection of claim 7 is respectfully requested.

Claims 8-10, 13, 14, 17-20, and 23-25 depend from and add further limitations to amended independent claim 7 or a subsequent dependent claim, and are believed to be patentable for at least the reasons discussed hereinabove in connection with amended independent claim 7. Reconsideration of the rejection of claims 8-10, 13, 14, 17-20, and 23-25 is respectfully requested.

**B. Rejection under 35 U.S.C. §103(a) in view of United States Patent No. 4,002,168 and United States Patent No. 5,186,559**

Claims 7-14, 17-20, and 23-25 stand rejected under 35 U.S.C. 103(a) for obviousness over the Petterson patent in view of United States Patent No. 5,186,559 to Fu (hereinafter "the Fu patent"). In view of the foregoing amendments and the following remarks, reconsideration of this rejection is respectfully requested.

As discussed in greater detail hereinabove and as defined by independent claim 7, the present invention is directed to an eye drop container that includes, *inter alia*, a cap with an

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opening member and a valve member that prevents the ambient air from flowing into the container when the valve member is in tight contact with the opening member from its outside and allows the liquid to flow out when the valve member is away from the opening member due to pressure of the liquid.

The Petterson patent is directed to a dispenser (10) suitable for storing and dispensing an ophthalmic product that includes a container (11), provided with an integral generally ring shaped positioning/guard means (12), dispensing orifice (13), and overcap (14). In addition, the dispenser (10) includes a pressure equalizing device (25), a filter (26), and an inlet (27) (*see* column 9, lines 24-54 of the Petterson patent).

The Fu patent discloses a cooking sauce dispenser and stand and is provided by the Examiner as allegedly disclosing an aerating device located at the bottom of the dispenser. More specifically, the Fu patent discloses a cooking sauce dispenser that includes air valves (130) and (132) formed in screw caps (28) and (30), respectively (*see* FIG. 1).

The Petterson patent, whether considered alone or in combination with the Fu patent, fails to teach or suggest a cap attachable to the container body and including an opening member for opening the instilling portion in an unopened stage and a valve member for allowing the liquid to flow out and preventing ambient air from flowing into the container, or that the valve member prevents the ambient air from flowing into the container when the valve member is in tight contact with the opening member from its outside and allows the liquid to flow out when the valve member is away from the opening member due to pressure of the liquid as required by amended independent claim 7.

For the foregoing reasons, the Applicants believe that the subject matter of amended independent claim 7 is not rendered obvious by the Petterson patent in view of the Fu patent. Reconsideration of the rejection of claim 7 is respectfully requested.

Claims 8-14, 17-20, and 23-25 depend from and add further limitations to amended independent claim 7 or a subsequent dependent claim, and are believed to be patentable

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for at least the reasons discussed hereinabove in connection with amended independent claim 7. Reconsideration of the rejection of claims 8-14, 17-20, and 23-25 is respectfully requested.

**C. Rejection under 35 U.S.C. §103(a) in view of United States Patent Application Publication No. 2002/0190079, United States Patent No. 4,002,168, and International Patent Application Publication No. WO 02/38464**

Claims 15, 16, 21, and 22 stand rejected under 35 U.S.C. 103(a) for obviousness over the Hamamoto publication in view of the Petterson patent, and further in view of International Patent Application Publication No. WO 02/38464 to Faurie (hereinafter “the Faurie publication”). In view of the foregoing amendments and the following remarks, reconsideration of this rejection is respectfully requested. Please note that claims 15, 16, 21, and 22 have been cancelled by the present Amendment, thereby rendering the rejection of these claims moot. However, since the language of claims 15 and 21 have been incorporated into independent claim 7, this rejection will be addressed hereinafter.

As discussed in greater detail hereinabove and as defined by independent claim 7, the present invention is directed to an eye drop container that includes, *inter alia*, a cap with an opening member and a valve member that prevents the ambient air from flowing into the container when the valve member is in tight contact with the opening member from its outside and allows the liquid to flow out when the valve member is away from the opening member due to pressure of the liquid.

The Hamamoto publication is directed to a dispensing container that includes a delaminating bottle (2) as a member for shutting off a liquid content from ambient air so that, without aid of any preservatives, a liquid residue is protected from contamination at a region adjacent to an outlet hole (3a). The container has a flexible nozzle (31) and a rod-shaped closer (32), both disposed in the mouth of bottle (2). The nozzle (31) is made of a pliable and elastic material, with the closer (32) being shaped to close a distal end region of the outlet hole (3a). By squeezing the barrel of the bottle to increase its internal pressure, the flexible nozzle (31) expands to make a deformation, which in turn causes the outlet hole (3a) to take an outward open

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position. The dispensing container includes vents (4) that may be formed at the bottom of the bottle (*see* paragraph [0034] of the Hamamoto publication). Ambient air is introduced between the container body (21) and a bag-like inner layer (22) to prevent ambient air from directly contacting the liquid contained in the dispensing container.

The Petterson patent is directed to a dispenser (10) suitable for storing and dispensing an ophthalmic product that includes a container (11), provided with an integral generally ring shaped positioning/guard means (12), dispensing orifice (13), and overcap (14). In addition, the dispenser (10) includes a pressure equalizing device (25), a filter (26), and an inlet (27) (*see* column 9, lines 24-54 of the Petterson patent).

The Faurie publication is directed to a drip liquid dispenser that includes a partition (7) and a pressing member (18). The pressing member (18) is suitable for breaking the partition (7) when the dispenser is used for the first time (*see*, for instance, claim 5).

The Petterson patent, the Hamamoto publication, and the Faurie publication, whether considered individually or in combination, fail to teach or suggest a cap attachable to the container body having an opening member and a valve member or that the valve member prevents the ambient air from flowing into the container when the valve member is in tight contact with the opening member from its outside and allows the liquid to flow out when the valve member is away from the opening member due to pressure of the liquid as required by amended independent claim 7.

The Examiner contends that it would have been obvious to one of ordinary skill in the art to provide the container disclosed by the Petterson patent with an opening member (18) and an unopened stage (7) as disclosed by the Faurie publication in order to ensure against contamination of the liquid. However, amended independent claim 7 specifically requires that the valve member prevents the ambient air from flowing into the container when the valve member is in tight contact with the opening member from its outside and allows the liquid to flow out when the valve member is away from the opening member due to pressure of the liquid. This feature of the claimed invention relates to the operation of the valve member **after the**

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**container is opened** by the opening element to prevent a contamination source from entering the container after it has been opened.

On the other hand, the Faurie publication only discloses that the pressing member (18) is suitable for breaking the partition (7) when the dispenser is used for the first time (*see* claim 5 of the Faurie publication), and is silent about the operation of the valve element after the dispenser is opened. Accordingly, the Faurie publication, whether considered alone or in combination with the Hamamoto publication and/or the Petterson patent, does not teach or suggest that the valve member prevents the ambient air from flowing into the container when the valve member is in tight contact with the opening member from its outside and allows the liquid to flow out when the valve member is away from the opening member due to pressure of the liquid as required by amended independent claim 7.

To establish *prima facie* obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. Where claimed limitations are simply not present in the prior art, a *prima facie* obviousness rejection is not supported. Accordingly, since the Hamamoto publication, the Petterson patent, and the Faurie publication, whether considered individually or in combination, fail to teach or suggest a cap attachable to the container body having an opening member and a valve member or that the valve member prevents the ambient air from flowing into the container when the valve member is in tight contact with the opening member from its outside and allows the liquid to flow out when the valve member is away from the opening member due to pressure of the liquid as required by amended independent claim 7 as discussed above, a *prima facie* case of obviousness has not been established.

For the foregoing reasons, the Applicants believe that the subject matter of amended independent claim 7 is not rendered obvious by the Hamamoto publication in view of the Petterson patent and the Faurie publication.

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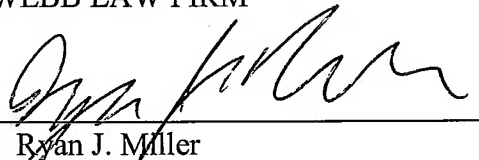
**III. Conclusion**

The Applicants respectfully request entry of the present Amendment and allowance, based on the foregoing amendments and remarks, of pending claims 7-14, 17-20, and 23-25. Should the Examiner have any questions or wish to discuss the application in further detail, the Examiner is invited to contact the Applicants' undersigned representative by telephone.

Respectfully submitted,

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